

**Notice of Allowability****Application No.**

10/577,138

**Applicant(s)**

BARTSCH ET AL.

**Examiner**

REI-TSANG SHIAO

**Art Unit**

1626

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/01/2008.
2. ☒ The allowed claim(s) is/are 1,2,4-9 and 15-21, now are 1-15.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_.

/REI-TSANG SHIAO /  
Primary Examiner, Art Unit 1626

**DETAILED ACTION**

1. This application claims benefit of the foreign application:  
GERMANY 10350999.2 with a filing date 10/30/2003.
2. Amendment of claims 7-9, cancellation of claim 3 and addition of claim 21 in the amendment filed on October 01, 2008 is acknowledged. Claims 1-2 and 4-21 are pending in the application. No new matter has been found. Since the newly added claim 21 is commensurate with the scope of the invention, claims 1-2 and 4-21 are prosecuted in the case.

***EXAMINER'S AMENDMENT***

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. Authorization for this examiner's amendment was given in a telephone interview with Georg M. Hasselmann on December 16, 2008. The application has been amended as follows:

In claim 1, page 4, after line 3, insert

--n is 0, 1 or 2,--

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In claim 15, line 1, after "A" delete "phosphinate", and insert

--phosphinite--

In claim 15, line 1, after "wherein the ", insert

--phosphinite--

In claim 16, line 1, after "A" delete "phosphinate", and insert

--phosphinite--

In claim 16, line 1, after "wherein the ", insert

--phosphinite--

In claim 17, line 1, after "A" delete "phosphinate", and insert

--phosphinite--

In claim 17, line 1, after "wherein the ", insert

--phosphinite--

In claim 18, line 1, after "A" delete "phosphinate", and insert

--phosphinite--

In claim 18, line 1, after "wherein the ", insert

--phosphinite--

In claim 19, line 1, after "A" delete "phosphinate", and insert

--phosphinite--

In claim 19, line 1, after "wherein the ", insert

--phosphinite--

In claim 20, line 1, after "A" delete "phosphinate", and insert

--phosphinite--

In claim 20, line 1, after "wherein the ", insert

--phosphinite--

In claim 21, line 2, after "phosphinite ", delete "phosphate", and insert

--phosphite--

Delete claims **10-14**.

### ***Reasons for Allowance***

4. The rejection of claims 1-2, 4-9 and 15-20 under 35 U.S.C. 112, second paragraph has been overcome in the above Examiner's amendment and the amendment filed on October 01, 2008. Since claim 3 has been canceled, the rejection of claim 3 under 35 U.S.C. 112, second paragraph has been obviated herein.

5. Applicant's arguments regarding the rejection of claims 1-2, 4-9 and 15-20 under 35 U.S.C. 103(a) over Gangne et al. '440 have been fully considered and they are persuasive. The instant invention is distinct from Gangne et al. '440. Therefore the rejection of claims 1-2, 4-9 and 15-20 under 35 U.S.C. 103(a) has been withdrawn

herein. Since claim 3 has been canceled, the rejection of claim 3 under 35 U.S.C. 103(a) has been obviated herein.

6. Claims 1-2, 4-9 and 15-21 are neither anticipated nor rendered obvious over the art of record, and therefore are allowable. A suggestion for modification of a reference to obtain the instant compounds and their processes of making has not been found. Claims 1-2, 4-9 and 15-21 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rei-tsang Shiao whose telephone number is (571) 272-0707. The examiner can normally be reached on 8:30 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/REI-TSANG SHIAO /  
Primary Examiner, Art Unit 1626

December 16, 2008